

31 July 2025

Director, Not-for-profits Unit
Personal and Indirect Tax and Charities Division
The Treasury
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Dear Director, Not-for-profits Unit

SW Accountants & Advisors Pty Ltd feedback

Giving fund reforms: distribution rate and smoothing Consultation Paper June 2025

SW Accountants & Advisors is a leading accounting and advisory firm dedicated to providing comprehensive financial solutions to our clients. Proudly recognised as the Best Provider to Financial & Insurance Services in the 2025 Beaton Client Choice Awards, we bring over 35 years of deep specialisation in the funds management sector. We are recognised as trusted advisors to both large listed and unlisted fund managers. Our team delivers a full suite of services including tax compliance, fund audits, AFSL audits, outsourced fund accounting, and international tax structuring.

We are submitting this response based upon our views and feedback obtained from our clients who have established Private Ancillary Funds (PAFs) / Giving Funds (Funds) and are keen to ensure their philanthropic efforts are both impactful and sustainable. We also have Directors of our firm who sit on the Boards of our clients' Funds, so they can share their insights into the investment and giving strategies of Funds.

Response to Consultation Paper Questions

1. Are these considerations appropriate in setting the minimum annual distribution rate?

Yes, we believe the considerations outlined are appropriate. The purpose of giving Funds is charitable, and investments should maximise benefits to item 1 DGRs. The distribution rate should balance the need for immediate funding with the long-term sustainability of the Funds. We support a minimum distribution rate of 5%. Any rate above 5% would require smoothing to prevent potential volatility in distributions.

2. Should the five-year transition period apply only to giving funds that exist at the time the distribution rate changes, or to all giving funds?

We agree that there should be a five-year transition period for existing Funds as they may not have sufficient liquid assets to make minimum annual distributions if the rate is increased immediately. We do not have a strong view on whether transitional rules should apply to new Funds. It would be sufficient to set a cut-off date to allow any new Funds established within 6 months of the legislation receiving royal assent to have the transition period. This approach ensures fairness and allows all Funds to adjust their investment strategies accordingly.

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3. What other considerations, if any, should the government consider in setting the minimum annual distribution rate?

Our experience with clients who establish Funds is that they want them to provide long term funding for DGRs. Not short-term sugar hits. Our clients will generally only establish a Fund where they are looking to contribute over \$1m to the Fund and they generally have the view that they will make further contributions over time (particularly upon death). They also wish their families to be involved in determining the distribution policy of the Fund and to develop a culture of donating. Therefore, any minimum distribution rate above 5% may impact on the willingness to set up Funds.

The benefit of long-term and enduring Funds is that they provide smooth income flows to DGRs and can top up charities in tough years when they need extra money for significant projects of capital works. Most of our large clients Funds (over \$3m balance) have a reasonably consistent list of DGRs that they donate the minimum distribution to annually and then also make contributions to special projects.

Funds have investment strategies to achieve the 5% distribution target. Some of them own real property and / or listed or unlisted shares. Increasing the minimum distribution rate above 5% might result in the requirement for real property and/or listed or unlisted shares to be sold at the wrong time in the market cycle and erode the value of the capital in the Fund and reduce the corresponding ability to distribute to DGRs.

The nature of the Fund should also be considered. For example, where a Fund has been established to donate to DGRs to provide scholarships it is more likely that the Donor would have an expectation that the Fund is enduring in nature. These Funds would prefer the real value of their capital not to be eroded to ensure that scholarships can be paid in the future. Therefore, if a rate of greater than 5% is chosen then there would be concern for these Funds.

The Productivity Commission did not recommend increasing the minimum distribution rate above the current level of 5% of the fund value, it stated that the government should set a minimum rate at between 5% and 8%. It would accordingly be consistent with the Productivity Report for the minimum to remain at 5%.

A minimum distribution rate does not prevent greater distributions by the Funds should they wish.

4. In setting the minimum annual distribution rate, is it appropriate to consider the time preferences of DGRs and the community?

Yes, it is appropriate to consider the time preferences of DGRs and the community. However, this should not come at the cost of the views of the donors. We feel that DGRs would agree that a consistent gift flow is better than a boom bust cycle.

5. Is your preference for DGRs to receive distributions sooner (implying use of a higher discount rate), later (a lower discount rate) or no preference?

We have received strong feed-back from some of our clients that the minimum distribution rate should not be greater than 5% and it would have an impact on their willingness to establish a Fund. This in turn would have a detrimental impact on DGRs.

Our preference is for a balanced approach that considers both immediate and long-term funding needs. The greater the minimum distribution rate that is determined the greater the smoothing period should be. A smoothing period of 5 years allows for a balanced approach to managing distributions, ensuring that charities receive consistent support while allowing Funds to adjust their investment strategies accordingly to allow for large capital contributions for projects run by DGRs.

6. To what extent should the wishes of donors to operate a fund in perpetuity be balanced against preferences of DGRs?

The wishes of donors to operate a Fund in perpetuity should be balanced against the preferences of DGRs. Higher distribution rates can lead to boom-and-bust cycles in charities, which should be avoided. A balanced approach ensures that Funds can provide consistent support to charities over time.

Whilst we have received varying feedback from our clients regarding minimum distribution rate, we have received very strong feedback from some clients that the enduring nature of Funds is important and that an 8% rate is too high and will impact the attractiveness of donors investing in Funds.

7. Do you have a view on how increasing the distribution rate would affect the willingness of donors to set up giving funds?

Leaving the distribution rate at the existing 5% should not have an impact on the willingness of the vast majority of donors to set up Funds. However, a rate above this may discourage some donors from setting up Funds, as it may not meet their long-term gifting wishes where they are looking to make contributions over time on an ad hoc basis based upon life events. It is important to strike a balance that encourages philanthropy while ensuring Funds can provide meaningful support to charities.

8. Given all considerations, do you have a view on what the appropriate minimum annual distribution rate should be?

A minimum annual distribution rate of 5% would be acceptable and is what all current donors are aware of when they set up their Funds. This rate is consistent with the philanthropic goals of our clients and ensures a steady flow of funds to charities. Any rate above 5% would require smoothing to prevent potential volatility in distributions. Where a minimum distribution rate is set at 5% we believe that our clients would make consistent annual donations to DGRs at this rate and this rate allows for one-off special distributions for capital projects or natural disasters to be made when required. If the rate is set above 5% then there could be a lot more volatility in distributions made to the annual recurring distributions to DGRs.

9. Are these principles for smoothing distributions reasonable? If you don't agree with one or more of them, please provide reasons.

Yes, the principles for smoothing distributions are important especially if a minimum distribution rate is set at greater than 5%. Smoothing over a discrete three-year period may be too short. We would recommend 5-years. The higher the minimum distribution rate the longer the smoothing period should be.

We did receive feed-back from some clients that increasing the distribution rate would require smoothing but smoothing does increase unwanted complexity, so a lower minimum distribution rate was preferred.

10. Should the Commissioner of Taxation have the ability, following notification by a giving fund of its intention to smooth distributions, to direct the fund to instead make the required minimum distribution in each year?

No, the Commissioner of Taxation should not have the ability to direct a fund to make the required minimum distribution in each year. Once the Fund has notified the Commissioner that it wants to smooth distributions that should be sufficient.

11. If the Commissioner is given the power to direct a fund to instead make the minimum annual distribution, what factors should the Commissioner be required to take into account before giving the direction?

We cannot see in any circumstances that the Commissioner should have this power.

12. Should a giving fund be able to access distribution smoothing if it has never previously made a distribution?

Yes, if a rate is set at greater than 5% then a Fund should generally be able to access distribution smoothing even if it has never previously made a distribution.

13. Are there other principles for smoothing that should be reflected in the guidelines?

No comment.

Other comments

Change of name to Giving Funds

The change of name is generally well received as the term Private Ancillary Fund is not easily identified by people who are new to setting up Funds as being philanthropic funds. However, some of our clients that already have PAF's don't believe that changing the name achieves anything and are concerned about the potential costs that may arise as a result of a change of name to existing funds, ACNC registrations, ABR and all Government Guidance.

It is important that there are transitional rules for existing Private Ancillary Funds such that they do not have to incur costs as a result of any change in name. Any additional Government or regulatory costs that arise as a result of the name change should only be incurred if it achieves a growth in the sector. Any resulting advertising that highlights the change in name should be targeted at promoting Giving Funds and growing philanthropic endeavours.

Conclusion

In conclusion, we support the proposed reforms with the considerations outlined above. We believe these changes will enhance the effectiveness of Funds and ensure they continue to provide valuable support to charities.

Thank you for considering our submission should you have any questions related to the submission please contact me.

Yours sincerely



Stephen O'Flynn

Chair

SW Accountants & Advisors Pty Ltd